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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/725,828	11/29/2000	Paul J. Rucinski	RUC-100DFDXC2	8718

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EXAMINER

LEWIS, KIM M

ART UNIT PAPER NUMBER

3743

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/725,828

Applicant(s)

RUCINSKI, PAUL J.

Examiner

Kim M. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 12-14 and 24-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-14 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Detailed Action.

DETAILED ACTION

Summary

1. The amendment filed on 3/17/04 has been received and made of record in the application file wrapper. As requested, the specification and claims 1, 4 and 5 have been amended.
2. Claims 1-6, 12-14 and 24-34 are pending in the instant application.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 and 5-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,583,602 ("Gruber") in view of U.S. Patent No. 5,441,174 ("Sperry").

As regards claim 1, Gruber discloses a dripless fluid spray apparatus comprising a reservoir housing (body 2) and a removable discharge means (3), which discharges a pressurized stream of fluid.

Gruber fails to teach the fluid is a wound irrigation solution. However, Sperry et al. teach a reservoir housing having a sterile wound irrigation solution for irrigating a wound. In view of Sperry, it would have been obvious to one having ordinary skill in the

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art to modify Gruber by adding a wound irrigation solution to the reservoir of Gruber in order provide dripless dispensing of the wound irrigation fluid to a user.

As regards claim 2, the portion of discharge means (3) that includes apertures (7) is a flat disc.

As regards claim 3, the ports of the instant claim read on apertures (7).

As regards claim 5, as can be seen from Fig. 1, Gruber discloses at least four ports (apertures).

As regards claim 6, Gruber is silent as to the diameter of the apertures and therefore fails to teach that the diameter of the apertures is above 0.04 inches. However, the examiner contends that it has been held that a change in size of a prior art device is a design consideration within the level of ordinary skill in the art. *In re rose*, 220 F.2d 459 669, 149 USPQ 47 (CCPA 1966).

Additionally, one having ordinary skill in the art would have found it within the level of ordinary skill in the art to adjust the diameter of the apertures depending upon the desired droplet size as well as the desired force of the fluid.

As regards claim 7, the reservoir housing of Gruber has a threaded neck (col. 1, lines 69-71) and an inherent opening, which allows for fluid flow from the housing to the dispensing means.

As regards claim 8, note the rejection of claim 7 above. Additionally, it is inherent that the flat disc is positioned over the opening.

As regards claim 9, note marked-up Fig. 1 of Gruber, which shows an end cap shown in Fig. 1.

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As regard claim 10, cap (4) of Gruber reads on the protective membrane of the instant claim.

As regards claim 11, the portion of the dispensing means connecting the cap to the end cap is considered the pull tab in that it can be pulled to release the cap and uncover the apertures.

As regards claims 12 and 13, Gruber fails to disclose a splash guard.

Sperry additionally teaches it is conventional to provide wound irrigation devices with hemispherical splashguards in order to prevent the back splashed irrigated fluid from contacting the physician.

In view of Sperry, it would have been obvious to provide the modified device of Gruber with a hemispherical splashguard in order to prevent the back splashed fluid from contacting the user.

As regards claim 14, the modified device of Grubber fails to include a splashguard having a removable protective cap. However, the examiner contends that since it is known to provide protective caps on components for dispensing fluids (e.g., the discharge means), one having ordinary skill in the art would have been motivated to also provide protective caps on any other components of the dispensing device that fluid may contact and then subsequently contact the wound.

Allowable Subject Matter

5. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed 3/17/04 have been fully considered but they are not persuasive. More specifically, applicant's argument regarding modifying the Sperry et al. reference is disregarded because the examiner's rejection did not suggest modifying Sperry et al. The Sperry et al. reference was cited to teach a wound irrigation solution.

7. In response to applicant's remarks that the Gruber reference is improperly relied upon because it is from non-analogous art, the examiner disagrees. First, the Gruber reference discloses a dripless fluid spray apparatus and states at col. 1, lines 6-10:

"Relatively small refillable containers, such as those utilized for dispensing herbicides, insecticides, fungicides, **and other liquid** materials, are typically provided with a dispenser of the plunger type which may be removed in order to refill the container."
(emphasis added by the examiner).

Applicant's invention is a dispenser. The examiner contends that one having ordinary skill in the art would have looked to Gruber, not because it can dispense herbicides, insecticides and fungicides, but because the invention disclosed in Gruber is **dispenser** for dispensing fluids.

With the exception of the sterile wound irrigation fluid, all other structural limitations of the claim 1 are met. Moreover, nothing in Gruber prevents the dispenser disclosed therein from being used as device for dispensing wound irrigation fluid.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703.308.0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Kim M. Lewis', is written over the printed name.

Kim M. Lewis
Primary Examiner
Art Unit 3743

kml
July 25, 2004